

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA §
§
V. § **CRIMINAL NO. 6:10-CR-61**
§
OSCAR GARCIA CADENA §

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On December 21, 2010, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Oscar Garcia Cadena. The government was represented by Allen Hurst, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by court-appointed federal defender, Kenneth Hawk.

Defendant originally pled guilty to the offense of Attempted Re-Entry of a Deported Alien, a Class C felony. The offense carried a statutory maximum imprisonment term of 20 years. The United States Sentencing Guideline range, based on a total offense level of 17 and a criminal history category of IV, was 37 to 46 months. On November 14, 2007, District Judge Donald E. Walter of the Southern District of Texas sentenced Defendant to 24 months imprisonment followed by a term of 3 years supervised release, subject to the standard conditions of release, plus special conditions to include, if deported, that Defendant was not to re-enter the United States illegally. On October 17, 2008, Defendant completed the term of imprisonment and was deported by the U.S. Immigration and Customs Enforcement.

On May 18, 2010 the case was transferred to District Judge Leonard Davis of the Eastern District of Texas.

Under the terms of supervised release, Defendant was prohibited, in relevant part, from re-entering the United States illegally if deported. In its petition, the government alleges that Defendant violated his term of supervised release by being unlawfully present in the United States after deportation and violating the special conditions of his supervised release.

If the Court finds by a preponderance of the evidence that Defendant committed the offense of Criminal Alien Unlawfully Present in the United States after Deportation, Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). The Court may then revoke supervised release. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade B violation is 12 to 18 months. U.S.S.G. 7B1.4(a).

If the Court finds by a preponderance of the evidence that Defendant violated the terms of supervision by violating the special condition prohibiting illegal re-entry into the United States following deportation, Defendant will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). The Court may then revoke supervised release or extend the term of supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade C violation is 6 to 12 months. U.S.S.G. 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to violating the conditions of supervision. In exchange, the government agreed to recommend that Defendant serve 12 months and 1 day in prison consecutive to the sentence rendered in Criminal Action No. 6:10-CR-43, with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court **RECOMMENDS** that Defendant Oscar Garcia Cadena be committed to the custody of the Bureau

of Prisons for a term of imprisonment of 12 months and 1 day with no supervised release to follow, a sentence served consecutive to the sentence rendered in Criminal Action No. 6:10-CR-43. The Court further **RECOMMENDS** that the place of confinement be FCI Seagoville, Texas.

Defendant has waived his right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Leonard Davis for adoption immediately upon issuance.

So ORDERED and SIGNED this 22nd day of December, 2010.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE